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TAGS: KJUS PTER PREL GM

SUBJECT: AL MASRI CASE UPDATE: MUNICH PROSECUTOR TO MAKE REQUEST FOR PROVISIONAL ARREST TO THE USG

REF: A. BERLIN 242

1B. BERLIN 230

1C. BERLIN 200

Classified By: Minister-Counselor for Economic Affairs Robert 1F. Cekuta for reasons 1.4 (b) and (d)

11. (SBU) Following up on April 7 media reports indicating the Munich State Prosecutor's Office planned to take a "new legal step" in the Al Masri case, Mission approached both the prosecutor's office in Munich and the Federal Justice Ministry. The Munich Deputy District Attorney told ConGen Munich April 10 his office has in fact requested that the German Ministry of Justice transmit the arrest warrants -- which are already the subject of an Interpol "Diffusion Notice" -- directly to U.S. authorities. The District Attorney stressed this was not a request for extradition, but rather characterized the request as a routine legal step in arrest warrants involving U.S. citizens, as the U.S. typically does not act on Interpol warrants alone.

12. (C) Embassy confirmed this information in a subsequent conversation with Christian Johnson, Office Director in the Justice Ministry's Division for International Legal Assistance and Extradition. According to Johnson, the request from the Munich District Attorney's Office is a "request for provisional arrest" pursuant to the provisions of the U.S.-German bilateral extradition treaty. Johnson indicated that the request had not/not yet been received by the Justice Ministry. Johnson noted the Justice Ministry and the MFA would both review any such request, but that in most cases requests for provisional arrest were considered routine. Johnson also pointed out that the request for provisional arrest would not/not necessarily lead to an extradition request. Even if the Munich prosecutor were to make a subsequent request for provisional extradition, the request would likewise have to be reviewed and approved both by the Justice Ministry and the MFA. This review would entail consideration of two major factors: (1) possible foreign policy implications of the request, and (2) the likelihood that the request would be acted upon positively by the United States. Johnson believed that, at a minimum, the second point would be a reason for Germany not/not to proceed with a request for provisional extradition. Johnson said he understood full well that the U.S. would not comply with such an extradition request. He went on to note that the U.S.-German bilateral extradition treaty did not obligate either state to extradite its own citizens/nationals.

13. (C) Emboffs have continued to stress with German counterparts the potential negative implications for our bilateral relationship, and in particular for our counter-terrorism cooperation, if further steps are taken to seek the arrest or extradition of U.S. citizens/officials. We most recently made these points with MOI and MOJ figures on the margins of the April 4-5 U.S.-EU Justice and Home Affairs Troika meetings in Berlin.

TIMKEN JR